



August 27, 2019

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Republic Services of Chula Vista  
ATTN: Managing Agent  
881 Energy Way  
Chula Vista, CA 91911

CT Corporation System  
Registered agent for:  
Republic Services, Inc.,  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

**SEP 04 2019**

Republic Services, Inc.  
ATTN: Managing Agent  
881 Energy Way  
Chula Vista, CA 91911

Republic Services of Chula Vista  
ATTN: Managing Agent  
18500 North Allied Way  
Phoenix, AZ 85054

Republic Services, Inc.  
ATTN: Managing Agent  
18500 North Allied Way  
Phoenix, AZ 85054

**Re: Notice of Violation and Intent to File Suit Under the Clean Water Act**

To the Above-Listed Recipients:

Please accept this letter on behalf of San Diego Coastkeeper ("Coastkeeper") and Coastal Environmental Rights Foundation ("CERF") regarding violations of the Clean Water Act<sup>1</sup> and California's Storm Water Permit<sup>2</sup> occurring at the Chula Vista Hauling Facility, 881 Energy Way, Chula Vista, California 91911 ("Chula Vista Hauling Facility" or "Facility"). The purpose of this letter is to put Republic Services of Chula Vista and/or Republic Services, Inc. ("Republic"), as the owner(s) and/or operator(s) of the Facility, on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Chula Vista Hauling Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Republic is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution

<sup>1</sup> Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

<sup>2</sup> National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ ("1997 Permit"), as amended by Order No. 2014-0057-DWQ ("2015 Permit").

control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1). This notice letter (“Notice Letter”) is being sent to you as the responsible Owner and/or Operator of the Chula Vista Hauling Facility, or as the registered agent for the owner and/or operator. This Notice Letter is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Republic that Coastkeeper and CERF intend to file a federal enforcement action against Republic for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

## **1. BACKGROUND**

### **1.1. San Diego Coastkeeper and Coastal Environmental Rights Foundation.**

San Diego Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 2825 Dewey Road, Suite 207, San Diego, California 92106. Founded in 1995, San Diego Coastkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of San Diego County watersheds. To further these goals, Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of themselves and their members.

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, California. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. CERF’s mailing address is 1140 S. Coast Highway 101, Encinitas, California 92024.

Members of Coastkeeper and CERF live in and around, recreate in and around, and enjoy the waters into which the Facility discharges, including the Otay River and San Diego Bay (collectively “Receiving Waters”). Members of Coastkeeper and CERF use the Receiving Waters to swim, boat, kayak, surf, bird watch, view wildlife, hike, bike, walk, run, and/or for general aesthetic enjoyment. Additionally, members of Coastkeeper and CERF use the Receiving Waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The discharges of pollutants from the Facility impair each of these uses. Discharges of polluted storm water from the Facility are ongoing and continuous. Thus, the interests of Coastkeeper’s and CERF’s members have been, are being, and will continue to be adversely affected by the Facility Owner and/or Operator’s failure to comply with the Clean Water Act and the Storm Water Permit.

### **1.2. The Owner and/or Operator of the Facility.**

Information available to Coastkeeper and CERF indicates that Republic Services, Inc. is the Owner and/or Operator of the Facility and has been for at least the past five years. *See* November 2016 Facility Storm Water Pollution Prevention Plan (“SWPPP”), § 1.1 (“The property is owned by Republic Services and is being operated by Republic Services.”). Republic

Services, Inc. is herein referred to as “Republic” or “Facility Owner and/or Operator.” Information available to Coastkeeper and CERF indicates that Republic Services, Inc. is an active Delaware corporation and its registered agent is CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

The Chula Vista Hauling Facility Owner and/or Operator has violated and continues to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Facility into local surface waters. As explained herein, the Facility Owner and/or Operator is liable for violations of the Storm Water Permit and the Clean Water Act.

### **1.3. The Facility’s Storm Water Permit Coverage.**

Certain classified facilities that discharge storm water associated with industrial activity are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent (“NOI”) to the State Water Resources Control Board (“State Board”) to obtain Storm Water Permit coverage. Information available to Coastkeeper and CERF indicates that the Chula Vista Hauling Facility first obtained Storm Water Permit coverage on July 6, 1998. The Facility submitted its most recent NOI on March 6, 2018 (“2018 NOI”). Coastkeeper and CERF obtained the 2018 NOI from California’s online Storm Water Multiple Application & Reporting Tracking System (“SMARTs”) database. The 2018 NOI lists the Facility Waste Discharge Identification (“WDID”) number as 9 371014355. The NOI identifies both the Facility site name and Facility operator as “Republic Services of Chula Vista.” However, the Facility’s SWPPPs dated June 2015 (“2015 SWPPP”), and November 2016 (“2016 SWPPP”) both state that the property is owned and operated by “Republic Services.” 2016 SWPPP § 1.1; 2015 SWPPP § 1.1. Furthermore, the Facility’s Level 2 Exceedance Response Action (“ERA”) Plan dated December 2017 (“2017 Level 2 ERA Action Plan”), and Level 2 ERA Technical Report dated December 31, 2018 (“2018 Level 2 ERA Report”) were both “prepared for Republic Services, Inc.” As such, information available to Coastkeeper and CERF indicates that Republic Services, Inc. is the Owner and/or Operator of the Facility. Thus, the Facility Owner and/or Operator has failed to file an accurate NOI regarding the Facility’s proper Owner and/or Operator in violation of the Storm Water Permit. *See* 1997 Permit § III, Attachment 3; 2015 Permit § I.A.17, Attachment D.

The 2018 NOI states that the facility size is 202,204 square feet, all of which is industrial area exposed to storm water, but does not indicate what percent of the site is impervious. The 2016 SWPPP, states that the site comprises approximately 4.64 acres, which is approximately equivalent to 202,204 square feet, but also fails to state what percentage of the site is impervious. Thus, information available to Coastkeeper and CERF indicates that the Facility Owner and/or Operator has failed to provide the total percentage of site impervious surface area in violation of Attachment D of the 2015 Storm Water Permit, and Attachment 3 of the 1997 Permit.

The 2018 NOI, and the 2016 SWPPP, list the Standard Industrial Classification (“SIC”) code for the Chula Vista Hauling Facility as 4212. The 2018 NOI describes this SIC code as “Local Trucking Without Storage” while the 2016 SWPPP describes it as “Motor Freight Transportation and Warehousing.” The entire Facility requires Storm Water Permit coverage.

Information available to Coastkeeper and CERF, including the Facility 2016 SWPPP describing vehicle and equipment maintenance and storage at the Facility, indicates that SIC code 4231 (terminal and joint terminal maintenance facilities for motor freight transportation) also applies to the Facility.

Coastkeeper and CERF put the Facility Owner and/or Operator on notice that industrial activities are conducted throughout the Facility, and thus the entire Facility requires Storm Water Permit coverage. In addition, even if the regulated industrial activities are not occurring throughout the entire Facility at all times, under the Storm Water Permit's definition of "storm water associated with industrial activities" and explanation of material handling activities, Coastkeeper and CERF puts the Facility Owner and/or Operator on notice that since insufficient best management practices ("BMPs") or other controls exist to separate the storm water flows from portions of the Facility where non-regulated activities may occur from storm water flows from the regulated industrial activities, storm water at the Facility commingles and thus all storm water discharges from the Facility are regulated under the Storm Water Permit.

#### **1.4. Storm Water Pollution and the Waters Receiving Facility's Discharges.**

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations around San Diego County, such as the Chula Vista Hauling Facility, pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Polluted discharges from industrial facilities similarly situated to the Chula Vista Hauling Facility often contain the following pollutants: heavy metals such as copper, iron, lead, aluminum, selenium, and zinc; pathogens and bacteria such as *E. coli*, enterococcus, and fecal coliform; excessive nutrients such as nitrogen and phosphorus; oil and grease ("O&G"), hydraulic fluids, antifreeze, aromatic hydrocarbons, and chlorinated hydrocarbons; solvents and detergents; and paints. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.<sup>3</sup> Discharges of polluted storm water pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Receiving Waters into which the Chula Vista Hauling Facility discharges polluted storm water are ecologically sensitive areas. The Otay River and portions of San Diego Bay provide critical migrating waterfowl habitat, nesting sites for sensitive bird species, and generally protect a tremendous diversity of plant and animal species. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, the Receiving Waters are still essential habitat for dozens of fish, bird, mammal, and reptile species. For

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<sup>3</sup> Health & Saf. Code §§ 25249.5 - 25249.1.

example, the Otay River Valley is home to coyotes, grey foxes, raccoons, desert cottontails, and American badgers.<sup>4</sup> According to the City of Chula Vista, over 200 bird species utilize the Otay River Valley including the great blue heron, snowy egret, white-tailed kite, northern harrier, red-tailed hawk, coots, ducks, and endangered birds such as Least Bell's Vireo and southwestern willow flycatcher.<sup>5</sup> Pollutants discharged from the Facility are deleterious to invertebrates, insects, larval fish, and local vegetation in the Otay River and Otay River Valley. As such these pollutant discharges strain the ecosystems on which numerous species, some of which are endangered, depend for survival.

Furthermore, the Otay River empties directly into the San Diego Bay National Wildlife Refuge, a 2,300-acre protected refuge managed by the U.S. National Fish and Wildlife Service at the southern end of San Diego Bay.<sup>6</sup> As over ninety percent of historic wetlands of San Diego Bay have been filled in, drained, or diked, this refuge provides critical habitat for hundreds of thousands of birds migrating along the Pacific Flyway, as well as for the bay's resident species. Storm water and non-storm water contaminated with pathogens, sediment, heavy metals, and other pollutants degrade San Diego Bay, and in particular the special biological significance of the National Wildlife Refuge.

The polluted discharges from the Facility harm the special aesthetic and recreational significance of the Receiving Waters, adversely impacting the public's ability, as well as that of Coastkeeper's and CERF's members, to use and enjoy these unique waterbodies. Otay Valley Regional Park extends from the mouth of the Otay River at San Diego Bay, along the Otay River to the Lower Otay Reservoir. The park includes several miles of hiking, biking, and equestrian riding along the Otay River, which offer recreational opportunities to observe not only wildlife, but also unique habitats which include maritime succulent scrub, southern cottonwood willow riparian forest, alkali marsh, Diegan coastal sage scrub, and the rare and local Orcutt's bird's beak.<sup>7</sup> The San Diego Bay National Wildlife Refuge is also easily accessible by the public for use and enjoyment. Pollutants discharged from the Chula Vista Hauling Facility affects the health of the Receiving Waters, and thus the plant and animal life of the surrounding habitats. Damage to these natural habitats, and thus the flora and fauna within them, harms the ability of the public, including Coastkeeper's and CERF's members' ability to use and enjoy the unique recreational opportunities offered by the Receiving Waters. Furthermore, Coastkeeper's and CERF's members are less likely to recreate in and around waters known to be polluted with pathogens such as E. coli and fecal coliform, as well as nutrients and toxic metals such as lead, copper, and zinc.

The California Regional Water Quality Control Board, San Diego Region, ("Regional Board") issued the *Water Quality Control Plan for the San Diego Basin* ("San Diego Basin Plan" or "Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Otay River include: Non-Contact Water Recreation, Warm

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<sup>4</sup> Otay Valley Regional Park Brochure, available at <https://www.chulavistaca.gov/home/showdocument?id=8405>.

<sup>5</sup> *Id.*

<sup>6</sup> U.S. Fish & Wildlife Service, San Diego Bay National Wildlife Refuge, *About the Refuge*, available at [https://www.fws.gov/refuge/San\\_Diego\\_Bay/about.html](https://www.fws.gov/refuge/San_Diego_Bay/about.html).

<sup>7</sup> Otay Valley Regional Park Brochure.

Freshwater Habitat, Wildlife Habitat, Rare, Threatened, or Endangered Species, and the potential Beneficial Use of Contact Recreation. Basin Plan, Table 2-2. The existing Beneficial Uses for the San Diego Bay include: Contact Recreation, Non-Contact Water Recreation, Preservation of Biological Habitats of Special Significance, Wildlife Habitat, Rare, Threatened, or Endangered Species, Migration of Aquatic Organisms, Marine Habitat, Estuarine Habitat, Spawning, Reproduction, and/or Early Development, Shellfish Harvesting, Commercial and Sport Fishing, Navigation, and Industrial Service Supply. *Id.* at Table 2-3.

According to the 2016 303(d) List of Impaired Water Bodies, San Diego Bay is impaired for mercury, polycyclic aromatic hydrocarbons (“PAHs”), and polychlorinated biphenyls (“PCBs”).<sup>8</sup> Other parts of San Diego Bay are impaired for benthic community effects, sediment toxicity, copper, total coliform, enterococcus, fecal coliform, and chlordane. Information available to Coastkeeper and CERF, including Coastkeeper’s monitoring data reported in the California Environmental Data Exchange Network (“CEDEN”), confirms that the Otay River is impaired for indicator bacteria such as *E. Coli* and enterococcus, as well as nutrients such as Nitrate + Nitrite (“N+N”) and phosphorus.<sup>9</sup>

## **2. THE CHULA VISTA HAULING FACILITY AND RELATED DISCHARGES OF POLLUTANTS**

### **2.1. The Facility Site Description and Industrial Activities.**

The Owners and/or Operators of the Chula Vista Hauling Facility state that the Facility primarily maintains and stores waste hauling vehicles, waste containers, and trash bins. 2016 SWPPP §§ 2.1.1-2. The maintenance of this equipment includes washing, welding, fueling, and oil refills. *Id.* The 2016 SWPPP also acknowledges outdoor material storage and vehicle parking occur outdoors. *Id.* § 2.1.2. Information available to Coastkeeper and CERF indicates that the Facility also engages in the following industrial activities: handling and storage of hazardous materials; storage of mechanical parts; storage of fuel and other flammable materials; natural gas compression and storage; paint storage; and storage and use of various other chemicals.

According to the Facility SWPPPs and site map, the areas of industrial activity at the Facility include the maintenance shop, wash bay, welding bay, truck storage area, waste container and trash bins storage areas, the truck parking and CNG fueling area, battery storage, flammables cabinet, the hazardous waste material storage area, metals storage bin, tire storage area, CNG dryer, compressor, and compressed fuel tank area, and fueling island. *Id.* at § 2.1.4.

According to the Facility SWPPPs, industrial materials associated with operations at the Chula Vista Hauling Facility include natural gas and CNG; other compressed gasses; diesel and other fuels; new and used oils and other lubricants; new and used antifreeze; welding metals;

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<sup>8</sup> 2016 Integrated Report – All Assessed Waters, *available at* [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2012.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml) (last accessed on August 14, 2019).

<sup>9</sup> This data and information is publicly available at <https://ceden.waterboards.ca.gov/AdvancedQueryTool> under the program titled “SDCK Monitoring Program.”

acetylene, oxygen, and carbon dioxide for welding; wash water; and refinishing debris. Information available to Coastkeeper and CERF indicates that the hauling vehicles maintained at the Facility have accumulated waste residue, trash, and other filth on their exterior and underside from handling municipal solid waste, green waste, and/or recyclables, which is tracked onto and throughout the Facility during the normal course of operations.

Information available to Coastkeeper and CERF indicates that these industrial activities occur at various locations throughout the Facility either outdoors, or without adequate cover to prevent storm water and non-storm water exposure to pollutant sources, and without adequate secondary containment or other adequate treatment measures to prevent polluted storm water and non-storm water from discharging from the Facility. Further, information available to Coastkeeper and CERF indicates that the pollutants associated with the Facility have been and continue to be tracked throughout the entire site, and on and off the Facility through ingress and egress. This results in trucks and vehicles tracking trash, pathogens, nutrient pollutants, sediment, dirt, O&G, metal particles, and other pollutants off-site. The resulting illegal discharges of polluted storm water and non-storm water impact Coastkeeper's and CERF's members' use and enjoyment of the Receiving Waters by degrading the quality of those waters, and by posing risks to human wellbeing, aquatic life, and ecosystem health.

## **2.2. Pollutants and Pollutant Sources Related to the Facility's Industrial Activities.**

According to the 2016 Facility SWPPP, pollutants which can potentially enter the Chula Vista Hauling Facility's storm water include "Sediment (including erodible soils and aggregates), Oil and Grease (waste oil and leaks from equipment), Hydrocarbons (petroleum products, hydraulic fluid, and fuel), Gross Pollutants (litter, debris, and floatables), Organics (cleaners, solvents, and herbicides), [and] Trace Metals." See 2016 SWPPP § 2.3.1.

Information available to Coastkeeper and CERF indicates that pollutants commonly present in storm water discharged from facilities similar to the Chula Vista Hauling Facility include: pathogens such as enterococcus, E. coli, and fecal coliform; excessive nutrients such as ammonia as nitrogen, nitrite, nitrate, total nitrogen and phosphorus; metals such as aluminum, lead, zinc, manganese, selenium, copper, and iron; dissolved oxygen; as well as a host of other pollutants acknowledged in the Facility SWPPPs such as gasoline and diesel fuels; fuel additives; coolants; antifreeze; transmission fluid; hydraulic fluid; waste oil; compressed natural gas; oil and grease; total suspended solids ("TSS"); and pH affecting substances.

As further discussed Sections 3.5.3 and 3.6.3, *infra*, the Chula Vista Hauling Facility SWPPPs have failed and continue to fail to adequately assess potential pollutant and pollutant sources, and the Facility has failed and continues to fail to monitor for all pollutants required by the Permit.

## **2.3. The Facility Storm Water Flow and Discharge Locations.**

Although Section 5.5.5 of the 2016 SWPPP erroneously states that the Facility consists of five drainage areas, other sections of the SWPPP and the Facility site map indicate that there are

two. According to the Facility Owner and/or Operator, Drainage Area 1 (“DA-1”) “includes the vehicle entry roadway, the truck parking and CNG fueling area, portions of the covered vehicle maintenance shop and work area.” 2016 SWPPP § 2.1.4. Information available to Coastkeeper and CERF indicates that DA-1 also includes a large hauling vehicle storage area, ingress/egress points to the vehicle maintenance shop and wash rack, underground storage tanks for oil and hydraulic fluids, a natural gas compressor, a CNG storage area, and a fuel island. The Facility site map and 2016 SWPPP indicates that water on the impervious surfaces of DA-1 is directed southwest via sheet flow and curb flow towards the storm drain inlet and vault identified as PL-1. The north side of this drainage area consists of a pervious slope that abuts the Otay Landfill directly to the north. “Surface flows from this slope are directed to the west with a masonry wall.” *Id.* The curb inlet at PL-1 contains a Filtrexx and Metaloxx filtration system, and the vault is fitted with a custom fabricated outlet screen to remove additional pollutants before discharge.

According to the Facility SWPPPs, Drainage Area 2 (“DA-2”) includes the trash bin and lift storage area, covered battery storage, flammables cabinet, the hazardous waste material storage area, employee parking area, and the office and shop area. *Id.* “Surface flows are directed southwest towards the berm, curb, and drains towards the flow through planter and discharges at RD-1.” *Id.* Information available to Coastkeeper and CERF indicates that DA-2 also includes the welding shop, tire storage area, outdoor waste bins, and ingress/egress points to the vehicle maintenance shop and wash rack. Furthermore, there is an entry/exit point from a dirt road into DA-2, through which waste hauling vehicles, bins, and containers can enter the Chula Vista Hauling Facility directly from the adjacent Otay Landfill Facility.

The Facility SWPPPs also fail to acknowledge various sloped areas which are outside of DA1, but located within the Facility boundary, and which border the western and southern boundaries of the Facility. According to the Facility Site Map, this unlabeled drainage area includes a natural gas compressor, compressed CNG storage tanks, a generator, and curotto waste can storage.

### **3. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT**

In California, any person who discharges storm water associated with certain industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1).

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Coastkeeper and CERF refer to as the “1997 Permit.” On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued, which Coastkeeper and CERF refer to as the “2015 Permit.” As explained below, the 2015 Permit includes terms that are as stringent or more stringent than the 1997 Permit. Accordingly, the Chula Vista Hauling Facility Owner and/or Operator is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984)



(holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) (“[l]imitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect”).

### **3.1. Unauthorized Non-Storm Water Discharges from the Facility in Violation of Storm Water Permit Discharge Prohibition.**

Except as authorized by certain special conditions, the Storm Water Permit prohibits permittees from discharging materials other than storm water (“non-storm water discharges” or “NSWDs”) either directly or indirectly to waters of the United States. 1997 Permit §§ A.1, D.1; 2015 Permit § III.B. Prohibited NSWDs must be either eliminated or permitted by a separate NPDES permit. 1997 Permit § A.1; 2015 Permit § III.B.

Information available to Coastkeeper and CERF indicates that unauthorized NSWDs occur at the Facility, and the Facility has failed to develop and/or implement adequate BMPs necessary to prevent these discharges. For example, unauthorized NSWDs occur at the Facility from the Facility's waste hauling truck, bin, and container washing activities. However, the Facility SWPPPs fail to identify any BMPs would prevent wash water from being tracked out of wash bays, commingling, and discharging from the Facility. NSWDs resulting from washing and cleaning are not from sources that are listed among the authorized NSWDs in the special conditions section of the Storm Water Permit, and are thus always prohibited. Furthermore, the 2016 SWPPP concedes that no non-storm water discharges are authorized at facility. 2016 SWPPP § 2.4. Therefore, the Facility Owner and/or Operator's assertion that “[t]here are no activities at this site that may result in unauthorized non-stormwater discharges” is erroneous, and in violation of the Storm Water Permit. *Id.*; *see also* 1997 Permit § A.1; 2015 Permit § III.B.

Coastkeeper and CERF put the Chula Vista Hauling Facility Owner and/or Operator on notice that the Storm Water Discharge Prohibition is violated each time unauthorized non-storm water is discharged from the Facility. *See* 1997 Permit § D.1; *see also* 2015 Permit § III.B. These Discharge Prohibition violations are ongoing and will continue until the Facility Owner and/or Operator develops and implements BMPs that prevent prohibited unauthorized NSWDs, or obtains separate NPDES permit coverage. Each time the Facility Owner and/or Operator discharges prohibited non-storm water in violation of the Storm Water Permit's Discharge Prohibitions is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owner and/or Operator has been in violation since August 26, 2014, and Coastkeeper and CERF will update the number and dates of violations when additional information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

### **3.2. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Discharge Prohibitions.**

Section III of the 2015 Permit enumerates several Discharge Prohibitions. Section III.D of the 2015 Permit states that “[d]ischarges that violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans), or statewide water quality control plans and policies are prohibited.” The San Diego Basin Plan designates beneficial uses for water bodies in the San Diego region and establishes water quality objectives and implementation plans to protect those beneficial uses.<sup>10</sup> The San Diego Basin Plan further establishes certain Waste Discharge Prohibitions.<sup>11</sup> Waste Discharge Prohibition number 5 of the San Diego Basin Plan states, “the discharge of waste to inland surface waters, except in cases where the quality of the discharge complies with the applicable receiving water quality objectives, is prohibited. Allowances for dilution may be made at the discretion of the Regional Board.”<sup>12</sup> “Waste” is defined as, “waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation,” which includes discharges of pollutants in storm water.<sup>13</sup> Accordingly, where the “quality of the discharge” does not meet water quality objectives, the discharge, absent an express “allowance for dilution” by the San Diego Regional Board is prohibited by Discharge Prohibition III.D of the 2015 Permit.

Information available to Coastkeeper and CERF, including its review of publicly available information and observations, indicates that no express allowance for dilution has been granted by the Regional Board applicable to the Chula Vista Hauling Facility’s discharges, or to the downstream Receiving Waters. As such, and consistent with Coastkeeper and CERF’s review of available information and direct observations, the analytical results of storm water sampling at the Facility demonstrate that the Chula Vista Hauling Facility Owner and/or Operator has violated and continues to violate Discharge Prohibition III.D of the 2015 Permit by discharging pollutants in excess of water quality objectives listed in the San Diego Basin Plan. The table attached hereto as Exhibit 1 includes sample results of storm water discharges collected and analyzed by the Facility. As demonstrated by the data in Exhibit 1, the Chula Vista Hauling Facility Owner and/or Operator has failed to discharge pollutants in storm water at or below Basin Plan Water Quality Objectives. For example, the Basin Plan Objective for hydrogen ion concentration (“pH”) for inland surface waters states that “the pH shall not be depressed below 6.5 nor raised above 8.5 S.U.” However, storm water samples collect from the Facility on December 16, 2016 at PL-1 and RD-1, December 5, 2016 at RD-1, December 12, 2014 at RD-1, and December 2, 2014 at PL-1 reflected a pH below 6.5. Ex. 1.

The Storm Water Permit Discharge Prohibitions further prohibit storm water discharges and authorized NSWDs which cause or threaten to cause pollution, contamination, or nuisance as defined in Section 13050 of the California Water Code. 1997 Permit § A.2; 2015 Permit § III.C. The California Water Code defines “contamination” as “an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease.” “Pollution” is defined as “an alteration of the quality

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<sup>10</sup> See [https://www.waterboards.ca.gov/sandiego/water\\_issues/programs/basin\\_plan/](https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/) for updated Basin Plan.

<sup>11</sup> San Diego Basin Plan, Chapter 4, page 4-19.

<sup>12</sup> *Id.* at page 4-20 (Waste Discharge Prohibition 5).

<sup>13</sup> California Water Code, § 13050(d) (emphasis added).

of the waters of the state by waste to a degree which unreasonably affects . . . [t]he waters for beneficial uses.”

Information available to Coastkeeper and CERF, including the Facility’s own storm water monitoring data and other publicly available information, indicates that the Chula Vista Hauling Facility has discharged, and continues to discharge, numerous pollutants in concentrations that cause or threaten to cause pollution, contamination, or nuisance in and around Receiving Waters. For example, the Chula Vista Hauling Facility’s own monitoring data shows that on numerous occasions during the past five years, the Facility has discharged TSS, pH, and zinc in excess of various water quality objectives, benchmarks and other standards which were promulgated to protect human health and the environment, as well as the Beneficial Uses of Receiving Waters. *See* Ex. 1. As such, the Chula Vista Hauling Facility’s discharges of polluted storm water have violated the Storm Water Permit’s Discharge Prohibition III.C.

Furthermore, as discussed in Section 3.6.3, *infra*, information available to Coastkeeper and CERF indicates that the Chula Vista Hauling Facility Owner and/or Operator has failed and continues to fail to analyze the Facility’s storm water discharges for numerous pollutants required by the Storm Water Permit. This information further indicates that the Facility has discharged and continues to discharge numerous pollutants in concentrations exceeding water quality objectives in violation of Discharge Prohibition III.D, and which cause or threaten to cause pollution, contamination, or nuisance in violation of Discharge Prohibition III.C.

Coastkeeper and CERF put the Chula Vista Hauling Facility Owner and/or Operator on notice that the Storm Water Permit Discharge Prohibition is violated each time storm water discharges from the Facility. *See* Exhibit 2 (setting forth dates of all precipitation events during the past five years).<sup>14</sup> These Discharge Prohibition violations are ongoing and will continue every time the Facility Owner and/or Operator discharges polluted storm water in violation of Discharge Prohibitions III.C or III.D of the 2015 Permit. Each time the Facility Owner and/or Operator discharges polluted storm water in violation of Discharge Prohibitions III.C or III.D of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owner and/or Operator has been in violation since August 26, 2014, and Coastkeeper and CERF will update the dates of violations when additional information and data become available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

Further, Coastkeeper and CERF put the Chula Vista Hauling Facility Owner and/or Operator on notice that Discharge Prohibitions III.C and III.D are independent Storm Water Permit requirements that must be complied with, and that carrying out the iterative process

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<sup>14</sup> Exhibit 2 includes the dates of all precipitation events recorded during the past five years, and the corresponding quantity of precipitation for each such event. The data in Exhibit 2 was recorded by the National Oceanic & Atmospheric Administration at the weather monitoring station geographically nearest to the Facility with complete precipitation records. Coastkeeper and CERF will include additional dates of rain events when that information becomes available.

triggered by exceedances of the Numeric Action Levels (“NALs”) listed at Table 2 of the 2015 Permit does not amount to compliance with the Discharge Prohibition provisions.

**3.3. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Effluent Limitation.**

The Storm Water Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable (“BAT”) for toxic and non-conventional pollutants and Best Conventional Pollutant Control Technology (“BCT”) for conventional pollutants. 1997 Permit § B.3; 2015 Permit § V.A.

The EPA’s NPDES Storm Water Multi-Sector General Permit for Industrial Activities (“MSGP”) includes numeric benchmarks for pollutant concentrations in storm water discharges (“EPA Benchmarks”). EPA Benchmarks are relevant and objective standards for evaluating whether a permittee’s BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B.3 of the 1997 Permit and Effluent Limitation V.A of the 2015 Permit.<sup>15</sup> As such, discharges from an industrial facility containing pollutant concentrations that exceed EPA Benchmarks indicate that the facility has not developed and/or implemented BMPs that meet BAT for toxic pollutants and BCT for conventional pollutants.<sup>16</sup>

Information available to Coastkeeper and CERF, including its review of publicly available information and observations, indicates that BMPs that achieve BAT/BCT have not been developed and/or implemented at the Chula Vista Hauling Facility. Consistent with Coastkeeper and CERF’s review of available information and direct observations, the Facility’s storm water monitoring data demonstrates that Facility discharges have exceeded EPA Benchmarks for several pollutants, indicating that the Facility has failed and continues to fail to develop and/or implement BMPs as required to achieve compliance with the BAT/BCT standards. For example, the Facility’s monitoring data reflects that multiple storm water samples have exceeded the EPA Benchmark for TSS of 100 mg/L. *See* Ex. 1. Furthermore, the Facility Owner and/or Operator analyzed its storm water discharges for zinc on December 2, 2014 and December 12, 2014, and each sample collected exceeded the EPA Benchmark for zinc of 0.12 mg/L.

As further discussed in Section 3.6.3, *infra*, information available to Coastkeeper and CERF indicates that the Chula Vista Hauling Facility Owner and/or Operator has failed and continues to fail to analyze storm water discharged from the Facility for numerous pollutants associated with the Facility’s industrial operations. As such, in addition to TSS, the Chula Vista Hauling Facility likely discharges numerous pollutants in concentrations exceeding EPA

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<sup>15</sup> *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009, Fact Sheet at 106; *see also* 65 Federal Register 64839 (2000).

<sup>16</sup> *Santa Monica Baykeeper v. Kramer Metals, Inc.*, 619 F.Supp.2d 914 (C.D. Cal. 2009).

benchmarks, indicating that the Facility has failed to develop and/or implement BMPs as required to achieve compliance with the BAT/BCT standards.

Coastkeeper and CERF put the Chula Vista Hauling Facility Owner and/or Operator on notice that the Storm Water Permit Effluent Limitation is violated each time storm water discharges from the Facility. *See* Ex. 2. These discharge violations are ongoing and will continue every time the Facility Owner and/or Operator discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Each time the Facility Owner and/or Operator discharges polluted storm water in violation of Effluent Limitation B.3 of the 1997 Permit and Effluent Limitation V.A of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owner and/or Operator has been in violation since August 26, 2014, and Coastkeeper and CERF will update the dates of violations when additional information and data become available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

Further, Coastkeeper and CERF put the Chula Vista Hauling Facility Owner and/or Operator on notice that the 2015 Permit Effluent Limitation V.A is an independent requirement that must be complied with, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A.

#### **3.4. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations.**

Receiving Water Limitation C.2 of the 1997 Permit prohibits storm water discharges and authorized NSWDs that cause or contribute to an exceedance of an applicable Water Quality Standard (“WQS”).<sup>17</sup> The 2015 Permit includes the same receiving water limitation. 2015 Permit § VI.A. Discharges that contain pollutants in excess of an applicable WQS violate the Storm Water Permit Receiving Water Limitations. 1997 Permit § C.2; 2015 Permit § VI.A.

Receiving Water Limitation C.1 of the 1997 Permit prohibits storm water discharges and authorized NSWDs to surface water that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. 2015 Permit § VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitation. 1997 Permit § C.1; 2015 Permit § VI.B.

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<sup>17</sup> The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to the impairment of Receiving Waters’ Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 (“CTR”), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

Information available to Coastkeeper and CERF indicates that storm water and NSWDS from the Facility contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS in violation of the Storm Water Permit's Receiving Water Limitations. As discussed in Section 3.6.3, *infra*, the Facility Owner and/or Operator has failed and continues to fail to sample and analyze storm water discharges for all parameters required by the Storm Water Permit. For example, as discussed in Section 2.2, *supra*, pollutants commonly present in storm water discharged from facilities similar to the Chula Vista Hauling Facility include pathogens such as enterococcus, E. coli, and fecal coliform, and excessive nutrients such as nitrogen and other nitrogen-based compounds like nitrite and nitrate. As such, the Facility likely discharges pollutants such as indicator bacteria and N+N in exceedance of applicable WQSs.

As explained herein, the Receiving Waters are impaired, and thus unable to support the designated Beneficial Uses, for some of the same pollutants discharged by the Facility. Coastkeeper's Ambient Monitoring Program data, publicly available via the CEDEN database, evidences that the Otay River is impaired for total coliform, E. coli, enterococcus, N+N, and phosphorus. As such, information available to Coastkeeper and CERF indicates that the Hauling Facility's discharges of elevated levels of indicator bacteria and N+N cause and/or contribute to the bacteria and nutrient impairments of the Otay River.

The CTR and Basin Plan are applicable WQSs under the Storm Water Permit. Thus, discharges from the Facility containing concentrations of pollutants in exceedance of WQSs, cause or contribute to the impairments of Receiving Waters in violation of Receiving Water Limitations of the Storm Water Permit. 1997 Permit § C.2; 2015 Permit § VI.A. Discharges of elevated concentrations of pollutants in the Facility's storm water also adversely impact human health. These harmful discharges from the Facility are also violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit § C.1; 2015 Permit § VI.B.

Coastkeeper and CERF put the Chula Vista Hauling Facility Owner and/or Operator on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See* Ex. 2. Each time discharges of storm water from the Facility cause and/or contribute to a violation of an applicable WQS, it is a separate and distinct violation of Receiving Water Limitation C.2 of the 1997 Permit, Receiving Water Limitation VI.A of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges of storm water from the Facility adversely impact human health or the environment, it is a separate and distinct violation of Receiving Water Limitation C.1 of the 1997 Permit, Receiving Water Limitation VI.B of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. The Facility Owner and/or Operator has been in violation since August 26, 2014, and Coastkeeper and CERF will update the dates of violation when additional information and data becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

Further, Coastkeeper and CERF put the Facility Owner and/or Operator on notice that Receiving Water Limitations are independent Storm Water Permit requirements that must be

complied with, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations.

### **3.5. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan.**

The Storm Water Permit requires permittees to develop and implement a Storm Water Pollution Prevention Plan prior to conducting industrial activities. A permittee has an ongoing obligation to revise the SWPPP as necessary to ensure compliance with the Storm Water Permit. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

#### **3.5.1. 1997 Permit SWPPP Requirements.**

Section A.1 and Provision E.2 of the 1997 Permit require dischargers to have developed and implemented a SWPPP prior to beginning industrial activities that meets all of the requirements of the 1997 Permit. The objectives of the 1997 Permit SWPPP requirements are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. 1997 Permit § A.2. These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A.9 of the 1997 Permit, and must be revised as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Sections A.9–10. Sections A.3–10 of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (§ A.4); a list of significant materials handled and stored at the site (§ A.5); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, NSWs and their sources, and locations where soil erosion may occur (§ A.6).

Sections A.7–8 of the 1997 Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized NSWs, including structural BMPs where non-structural BMPs are not effective.

#### **3.5.2. 2015 Permit SWPPP Requirements.**

As with the SWPPP requirements of the 1997 Permit, Sections X.A–H of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the

requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objective of the SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. 2015 Permit § X.C.

The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, points of discharge, direction of flow, areas of actual and potential pollutant contact, nearby water bodies, and pollutant control measures; a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized NSWDS necessary to comply with the Storm Water Permit; the identification of NSWDS and the elimination of unauthorized NSWDS; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities; and the identification of individuals and their current responsibilities for developing and implementing the SWPPP. 2015 Permit §§ X.A–H.

Further, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit §§ X.A–B. Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results; a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system; a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed; and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit §§ X.B, XV.

### 3.5.3. The Chula Vista Hauling Facility Owner and/or Operator Has Violated and Continues to Violate the Storm Water Permit SWPPP Requirements.

The Chula Vista Hauling Facility Owner and/or Operator has conducted and continues to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. First, information available to Coastkeeper and CERF indicates that the Facility site map has failed and continues to fail to accurately include all information required by the Storm Water Permit. The most recent site map publicly available via the SMARTS database is dated May 14, 2015, and was uploaded to the database June 26, 2015. This site map, as well as the Facility SWPPPs, fail to accurately label all areas of industrial activity. For example, the site map and SWPPPs fail to acknowledge that waste hauling trucks, bins, and containers, all of which have been recently exposed to a variety of trash and waste, frequently enter and exit the Facility via the driveway located within DA-2, as well as frequently traverse DA-1. Furthermore, the site map and SWPPP fail to acknowledge the ingress/egress point through which waste hauling vehicles, bins, and containers enter the Facility directly from the Otay Landfill via a dirt road on the eastern side of the Facility. Waste hauling vehicles, bins and containers entering the Facility



directly from the Otay Landfill are likely to track significant quantities of pollutants onto the impervious surfaces of the Chula Vista Hauling Facility. Additionally, as noted in Section 2.2, *supra*, the Facility SWPPPs also fail to acknowledge storm water runoff from various sloped areas which are outside of DA1, but located within the Facility boundary, and which border the western and southern boundaries of the Facility. According to the Facility Site Map, this unlabeled drainage area includes a natural gas compressor, compressed CNG storage tanks, a generator, and waste can storage. As such, several industrial activities are conducted within these areas, yet the Facility SWPPPs fail to assess storm water flow or pollutant sources.

The Chula Vista Hauling Facility Owner and/or Operator has failed and continues to fail to develop and/or implement a SWPPP that includes an adequate description of potential pollutant sources. Section X.G.1.a of the 2015 Permit requires dischargers to “ensure the SWPPP *describes* each industrial process including: manufacturing, cleaning, maintenance, recycling, disposal, and any other activities related to the process.” (emphasis added). Both the 2015 and 2016 Facility SWPPPs fail to provide adequate descriptions of any industrial activities conducted at the Facility. Sections 2.1.2 provides only cursory summaries of which industrial activities take place at the Facility, but fail to adequately “*describe* each industrial process,” and all activities related each process as required by the Storm Water Permit. For example, the 2016 SWPPP’s list of “specific industrial activities” lacks any sort of specificity and consists of only “vehicle and equipment maintenance,” “vehicle and equipment fueling,” and “container maintenance.” The SWPPP fails to describe how vehicles and equipment are washed, whether and how any wash water is contained, how welding operations are conducted, what other maintenance is performed on vehicles and bins, how the Facility compresses natural gas and provides this fuel to its vehicles, etc. While the 2016 SWPPP incorporates Table 2.1.a, “Industrial Activities and Associated Materials,” and Table 2.1.b, “List of Significant Industrial Materials,” these tables are even more cursory than the narrative descriptions provided in Section 2.1 of the 2016 SWPPP. As such, the SWPPPs fail to provide the required *description* of industrial activities in violation of the Storm Water Permit. *See* 2015 Permit § X.G.1.

The Chula Vista Hauling Facility Owner and/or Operator has failed and continues to fail to develop and/or implement a SWPPP that includes an adequate pollutant source assessment. Section X.G.2 of the 2015 Permit requires dischargers to “ensure that the SWPPP includes a *narrative* assessment of all areas of industrial activity with potential industrial pollutant sources.” (emphasis added). This assessment shall include “pollutants likely to be present in industrial storm water discharges and authorized NSWDS,” (§ X.G.2.a.ii), “[t]he degree to which the pollutants associated with those materials may be exposed to, and mobilized by contact with, storm water,” (§ X.G.2.a.iv), “[t]he direct and indirect pathways by which pollutants may be exposed to storm water or authorized NSWDS,” (§ X.G.2.a.v), and “[t]he effectiveness of existing BMPs to reduce or prevent pollutants in industrial storm water discharges and authorized NSWDS,” (§ X.G.2.a.vii), among other requirements.

The 2015 and 2016 Facility SWPPPs fail to comply with any of the aforementioned requirements of X.G.2. The only narrative assessment provided in the 2016 SWPPP cursorily lists out the industrial activities conducted at the Facility, and summarily states “[p]ollutants that can potentially enter storm water run-off and other discharges draining from the facility include:

Sediment (including erodibles and aggregates), Oil and Grease (waste oil and leaks from equipment), Hydrocarbons (petroleum products, hydraulic fluid, and fuel), Gross Pollutants (litter, debris, and floatables), Organics (cleaners, solvents, and herbicides), [and] Trace Metals.” 2016 SWPPP § 2.3.1. Furthermore, the only pollutants identified in the 2016 SWPPP’s table of “industrial activities and associated pollutants” are oil and grease, hydrocarbons, diesel fuel, gross pollutants, and trace metals. 2016 SWPPP, Table 2.1.a. Given the activities, operations, and materials present at this Facility as described in Section 2, *supra*, the 2016 SWPPP pollutant source assessment of only sediment, O&G, hydrocarbons, gross pollutants, organics, and trace metals is woefully inadequate. As the pollutants identified in the pollutant source assessment are used to determine the parameters for which a Facility samples and analyzes its storm water, the Chula Vista Hauling Facility Owner and/or Operator’s identification of only these minimum pollutants evidences an intent to circumvent requirements of the Storm Water Permit, and thus avoid analyzing its storm water for required additional parameters.

Moreover, as discussed in Section 2.2, *supra*, information available to Coastkeeper and CERF indicates that there are numerous other pollutants present in the Facility’s storm water discharges. However, the Facility SWPPPs fail to assess the vast majority of these pollutants, and thus egregiously violate the Storm Water Permit SWPPP requirements.

The Chula Vista Hauling Facility Owner and/or Operator has failed and continues to fail to develop and/or implement a SWPPP that contains BMPs to prevent the exposure of pollutants and pollutant sources to storm water and the subsequent discharge of polluted storm water from the Facility, as required by the Storm Water Permit. This is due in part to the SWPPPs’ failure to include adequate site-specific information regarding the BMPs developed and/or implemented at the Facility. For example, Section 3.1 of the 2016 SWPPP simply states “[a]ll minimum Best Management Practices (BMPs) that are required by the IGP and necessary to meet the facility conditions will be implemented.” Thereafter, sections 3.1.1 through 3.1.7 of the 2016 SWPPP largely parrot the 2015 Permit language setting forth minimum BMP requirements. Furthermore, rather than provide site-specific details regarding which BMPs will be implemented at specific facility locations to address specific pollutants, the 2016 SWPPP’s BMPs section cites to the generic CASQA Stormwater BMP Handbook Portal for additional BMPs details. 2016 SWPPP § 3.1. Moreover, Table 3.1 of the 2016 SWPPP contradicts the SWPPP’s statement that all minimum BMPs required by the Permit will be implemented. For example, Table 3.1 indicates that vehicle and equipment cleaning BMPs, as well as outdoor equipment operations BMPs, are “not applicable” to the Facility. As one the Facility’s primary industrial activities is washing and cleaning vehicles and equipment, and wash hauling vehicles are regularly operating outdoors at the Facility, stating BMPs pertaining to these activities is clearly erroneous.

The Facility SWPPPs also fail to adequately analyze the pollutants that each BMP is designed to reduce or prevent from discharging in violation of section X.H.4.a.i of the 2015 Permit. Additionally, Tables 3.1, 3.3, and 3.4 of the 2016 SWPPP, which identify minimum BMPs, stormwater containment and discharge reduction BMPs, and treatment control BMPs respectively, each fail to indicate which pollutants will be addressed by each BMP. Finally, Table 3.5, the BMP summary table, also fails to adequately identify the potential pollutants addressed by each BMP. The only potential “pollutants” identified by Table 3.5 are oil and

grease, suspended sediment, and metals and thus fails to mention numerous pollutants present at the Facility. Therefore, the 2016 SWPPP fails to provide adequate site-specific information regarding how and where such BMPs are implemented, in violation of the Storm Water Permit. *See* 2015 Permit §§ X.A; X.H.

The SWPPP's inadequacies are further documented by the continuous and ongoing discharge of storm water containing pollutant levels that exceed EPA Benchmarks and applicable WQSS, which indicate that the Facility's BMPs are failing to meet BAT/BCT requirements.

The objectives of the Permit's SWPPP requirements are to identify and evaluate sources of pollutants associated with industrial activities, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. However, the current Facility SWPPP fails to adequately assess pollutant sources, describe industrial activities, or implement adequate BMPs. These failures completely undermine the intent of the Storm Water Permit's SWPPP provisions. *See* 2015 Permit § X.C.

The Chula Vista Hauling Facility Owner and/or Operator has also failed to revise the Facility's SWPPP to ensure compliance with the Storm Water Permit. Despite the significant concentrations of pollutants in the Facility's storm water discharges each year, information available to Coastkeeper and CERF indicates that the Facility SWPPP has remained the same since November 2016, and has not been revised to include additional BMPs to eliminate or reduce these pollutants, as required by the Storm Water Permit.

Accordingly, the Chula Vista Hauling Facility Owner and/or Operator has failed and continues to fail to adequately develop, implement, and/or revise the Facility SWPPP in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed and/or implemented SWPPP, and/or with an improperly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit SWPPP requirements since at least August 26, 2014. These violations are ongoing, and Coastkeeper and CERF will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

### **3.6. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program.**

The Storm Water Permit requires permittees to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. A permittee has an ongoing obligation to revise the M&RP as necessary to ensure compliance with the Storm Water Permit. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

#### **3.6.1. 1997 Permit M&RP Requirements.**

Section B.1 and Provision E.3 of the 1997 Permit require facility operators to develop and implement an adequate M&RP prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit § B2.

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* §§ B.3–16. Dischargers must revise the SWPPP in response to their M&RP observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.* § B.4. Sections B.5 and B.7 of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

Sections B.5 and B.7 of the 1997 Storm Water Permit require dischargers to visually observe and collect samples of storm water from all drainage areas and discharge locations where storm water is discharged. Under Section B.5 of the Storm Water Permit, a permittee is required to collect at least two (2) samples from each discharge location at the facility during the Wet Season. Storm water samples must be analyzed for TSS, pH, SC, total organic carbon or O&G, and other pollutants that are likely to be present in the facility's discharges in significant quantities. *Id.* § B.5.c. Finally, permittees must identify and use analytical method detection limits sufficient to determine compliance with the 1997 Permit's monitoring program objectives and specifically, the Effluent Limitations and Receiving Water Limitations. *Id.* § B.10.iii.

### 3.6.2. 2015 Permit M&RP Requirements.

As with the 1997 M&RP requirements, Sections X.I and XI.A–D of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. 2015 Permit § XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.*

As an *increase* in frequency of monitoring requirements, Sections XI.B.1–5 of the 2015 Permit requires permittees to collect storm water discharge samples from a qualifying storm event<sup>18</sup> as follows: 1) from each drainage area at all discharge locations, 2) from two (2) storm events within the first half of each Reporting Year<sup>19</sup>(July 1 to December 31), 3) from two (2)

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<sup>18</sup> The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).

<sup>19</sup> A Reporting Year replaced the 1997 permit term Wet Season, and is defined as July 1 through June 30. 2015 Permit, Findings, ¶ 62(b).

storm events within the second half of each Reporting Year (January 1 to June 30), and 4) within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. The 2015 Permit requires, among other things, that permittees must submit *all sampling* and analytical results for all samples via SMARTS within 30 days of obtaining all results for each sampling event. *Id.* § XI.B.11 (emphasis added).

The parameters to be analyzed are also consistent with the 1997 Permit, however, the 2015 Permit no longer requires SC to be analyzed. Sections XI.B.6.a–b of the 2015 Permit requires permittees to analyze samples for TSS, O&G, and pH. Section XI.B.6.c–d of the 2015 Permit requires permittees to analyze samples for all pollutants associated with the Discharger’s industrial activities. Specifically, the 2015 Permit requires Facility Owners and/or Operators to sample and analyze parameters on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment. *Id.* § XI.B.6.c. Section XI.B.6.e of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with a Clean Water Act Section 303(d) listed impairment(s), or approved Total Maximum Daily Loads.

3.6.3. The Facility Owner and/or Operator Has Violated and Continues to Violate the Storm Water Permit M&RP Requirements.

The Chula Vista Hauling Facility Owner and/or Operator has conducted and continues to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the Chula Vista Hauling Facility Owner and/or Operator has failed and continues to fail to sample and analyze storm water discharges for all parameters as required by the Storm Water Permit, and fails to collect samples from all discharge locations.

Information available to Coastkeeper and CERF indicates that the Chula Vista Hauling Facility Owner and/or Operator has failed to sample for numerous constituents likely to be present at the Facility in violation of section XI.B.6.c of the 2015 Permit. In light of the Facility’s activities of storing, washing, welding, painting, and otherwise maintaining waste hauling trucks and containers, dozens of pollutants are likely present at the Facility, as previously explained in Section 2.2, *supra*. Furthermore, as noted in multiple sections *supra*, the Facility Owner and/or Operator analyzed its storm water discharges for zinc on December 2, 2014 and December 12, 2014, and each sample collected exceeded the EPA Benchmark for zinc of 0.12 mg/L. Yet, the Facility Owner and/or Operator ceased sampling for zinc after December 12, 2014 without providing explanation or implementing any BMPs to reduce and/or prevent discharges of zinc in the Facility’s storm water, indicating that the Facility continues to discharge high levels of zinc. The Facility has therefore failed and continues to fail to sample for numerous “additional” parameters in violation of Section B.5.c of the 1997 Permit, and Section XI.B.6.c of the 2015 Permit.

In addition, the Chula Vista Hauling Facility Owner and/or Operator has failed and continues to fail to develop and/or implement an M&RP that requires the collection of storm water samples from all discharge locations at the Facility in violation of Section XI.B.4 of the 2015 Permit. For example, the Facility Owner and/or Operator only collects samples from DA-1

sampling location PL-1, and from DA-2 at sampling location RD-1. However, the Facility Owner and/or Operator has failed to collect samples from the unnamed drainage area between DA-1 and the Facility boundary along the western and southern edges of the property. The Facility site map indicates that storm water flows down a slope on the western side of the property, and likely onto a neighboring facility. The site map further indicates that storm water on the southernmost edge of the Facility is routed westward along the property boundary, and discharges from the southwestern corner of the Facility. As discussed in Section 3.5.3, *supra*, the Facility conducts various industrial activities within this drainage area.

Section XI.B.4 of the 2015 Permit specifically requires dischargers to collect samples “from *each drainage area* at *all* discharge locations.” While Section B.7.d of the 1997 Permit and Section XI.C.4 of the 2015 Permit allow permittees to reduce the number of locations to be sampled, there is no indication that the Facility Owner and/or Operator has complied with the requirements of Section B.7.d of the 1997 Permit or Section XI.C.4 to justify sampling a reduced number of discharge locations at the Facility. In addition to failing to collect samples from the unnamed drainage area between DA-1 and the Facility boundary along the western and southern edges of the property, the Facility also failed to collect a sample from PL-1, sampling only RD-1 during the most recent sampling conducted on May 22, 2019. The Facility’s 2018-2019 Annual Report indicates that PL-1 was clogged. However, information available to Coastkeeper and CERF indicates that this clog did not prevent storm water from discharging from the Facility. Therefore, the Chula Vista Hauling Facility is in violation of the Storm Water Permit for failing to collect samples from each drainage area at all discharge points.

The Chula Vista Hauling Facility Owner and/or Operator also failed to collect the required number of storm water samples for each reporting period. For example, the Facility only collected one sample during the entire 2017-2018 reporting period.

Finally, the Storm Water Permit requires dischargers to conduct visual observations of storm water discharges, of authorized and unauthorized NSWDS, and of BMPs. Based on information available to Coastkeeper and CERF, including Annual Reports, the Chula Vista Hauling Facility Owner and/or Operator fails to consistently, and/or adequately, conduct the required discharge observations and monitoring of BMPs.

Accordingly, the Chula Vista Hauling Facility Owner and/or Operator has failed and continues to fail to adequately develop, implement, and/or revise a M&RP, in violation of the Storm Water Permit. Every day the Facility operates with an inadequately developed and/or implemented M&RP, or with an improperly revised M&RP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit M&RP requirements since at least August 26, 2014. These violations are ongoing, and Coastkeeper and CERF will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

### **3.7. Failure to Comply with the Storm Water Permit's Reporting Requirements.**

Section B.14 of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B.14 requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B.13. The 2015 Permit includes the same reporting requirements with the Annual Report due July 15. *See* 2015 Permit § XVI.

The Chula Vista Hauling Facility Owner and/or Operator has failed and continues to fail to submit Annual Reports that comply with the Storm Water Permit reporting requirements. For example, the Facility Owner and/or Operator simply failed to upload an Annual Report to the SMARTS database for the reporting period of 2017-2018. Additionally, the Annual Reports for the 2015-16 and 2016-17 reporting periods state that ammonia, iron, manganese, and nitrogen are not present at the Facility, and certify that the Facility included these pollutants in the SWPPPs' pollutant source assessment. However, the Facility SWPPPs fail to assess any of these pollutants, and, as discussed in Section 2.2, *supra*, information available to Coastkeeper and CERF indicates that all of these pollutants are present at the Chula Vista Hauling Facility.

In each Annual Report since the filing of the 2013-14 Annual Report, the Chula Vista Hauling Facility Owner and/or Operator certifies that: (1) a complete Annual Comprehensive Site Compliance Evaluation was conducted as required by the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Coastkeeper and CERF indicates that these certifications are erroneous. For example, storm water samples collected from the Facility contain concentrations of pollutants above EPA Benchmarks and WQSSs, thus demonstrating that the Facility BMPs do not adequately address existing potential pollutant sources. Further, as discussed in Sections 3.5.3 and 3.6.3, the Facility's SWPPPs do not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

In addition, Chula Vista Hauling Facility Owner and/or Operator has not accurately reported non-compliance, as required by the Storm Water Permit. *See* 1997 Permit § C.11.d; 2015 Permit § XVI.B.2.

Given that the Chula Vista Hauling Facility Owner and/or Operator has submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit, the Facility Owner and/or Operator is in daily violation of the Storm Water Permit. Every day the Facility Owner and/or Operator conducts operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least August 26, 2014. These violations are ongoing, and Coastkeeper and CERF will include additional violations when information becomes available. The Facility

Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

### **3.8. Failure to Comply with Level 1 Exceedance Response Action Requirements.**

When the 2015 Permit became effective on July 1, 2015, all permittees were in “Baseline status” for all parameters listed in Table 2 of the 2015 Permit. 2015 Permit § XII.B. A permittee’s Baseline status for any given parameter changes to “Level 1 status” if sampling results indicate a NAL exceedance for that same parameter. *Id.* § XII.C. Level 1 status commences on July 1 following the Reporting Year during which the exceedance(s) occurred, and the discharger enters the Exceedance Response Action (“ERA”) process. *Id.* The ERA process requires the discharger to conduct an evaluation, with the assistance of a Qualified Industrial Storm Water Practitioner (“QISP”), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s) by October 1 following commencement of Level 1 status. *Id.* § XII.C.1.a-b. The evaluation must include the identification of the “corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the General Permit.” *Id.* § XII.C.1.c. “Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated.” *Id.*

Based upon this Level 1 status evaluation, the permittee is required to, as soon as practicable but no later than January 1 following commencement of Level 1 status, prepare a Level 1 ERA Report. *Id.* § XII.C.2. The Level 1 Report must be prepared by a QISP and include a summary of the Level 1 ERA evaluation and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded a NAL. *Id.* § XII.C.2.a.i-ii. The SWPPP revisions and additional BMP development and implementation must also be completed by January 1, and the Level 1 status discharger is required to submit via SMARTS the Level 1 ERA Report certifying the evaluation has been conducted, and SWPPP revisions and BMP implementation have been completed. *Id.* The certification also requires the QISP’s identification number, name, and contact information (telephone number, e-mail address) no later than January 1 following commencement of Level 1 status. *Id.* § XII.C.2.a.iii. A permittee’s Level 1 status for a parameter will return to Baseline status if a Level 1 ERA report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive qualified storm events that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. *Id.* § XII.C.2.b. A permittee will enter a Level 2 status if there is a NAL exceedance of the same parameter when the discharger is in Level 1 status. *Id.* § D.

The Chula Vista Hauling Facility entered Level 1 status for TSS following the 2015-16 reporting period with an average annual concentration of TSS of 273 mg/L, exceeding the annual NAL of 100 mg/L. Following the 2016-17 reporting period, the Facility entered Level 2 status for TSS with an average annual concentration of TSS of 152.75 mg/L. Following the 2017-18 reporting period, during which the Facility Owner and/or Operator collected only one sample, the Facility remained Level 2 for TSS. The Facility’s sampling data from the 2018-19 reporting



currently reflects an average of 264 mg/L TSS, indicating that the Facility will again exceed NAL standards for the current reporting period.

Coastkeeper and CERF note that, due to the Facility's failure to collect samples from all drainage areas and all discharge points, as well as the failure to analyze storm water samples for all parameters required by the Storm Water Permit, the Facility's monitoring data fails to accurately portray the Chula Vista Hauling Facility's actual NALs exceedances and proper ERA levels.

In September 2016, the Facility Owner and/or Operator submitted a consolidated ERA Level 1 Evaluation and Report for TSS ("2016 Level 1 ERA Report"). The 2016 Level 1 ERA Report failed to conduct an adequate Level 1 status evaluation to identify additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances at the Facility. The 2016 Level 1 ERA Report's "evaluation" identified the likely source of TSS at the Facility as "[i]ndustrial activity, truck movement around the site, [and] wind blown" sediment, and simply recommended hand sweeping around PL-1 and exploring the option of a better sweeper truck. This alleged evaluation of the sources of TSS at the Facility is woefully inadequate. The Report's statement that a likely source of TSS is "industrial activity" is entirely void of specificity, thus violating Section XII.C.1.b of the 2015 Permit and undermining the intent of the ERA provisions of the Storm Water Permit. As the Facility has continued to discharge TSS in excess of NALs, the 2016 Level 1 ERA Report failed to adequately evaluate sources of TSS, or recommend BMPs that would successfully reduce TSS below the NAL standard. *See* 2015 Permit § XII.C.1.c.

In December 2017, the Chula Vista Facility Owner and/or Operator published the Level 2 ERA Action Plan, which is publicly available on the SMARTS online database. The 2015 Permit requires that a Level 2 ERA Action Plan shall at a minimum address the drainage areas with corresponding Level 2 NAL exceedances. 2015 Permit § XII.D.1.c. As previously discussed, the Facility Owner and/or Operator has failed to collect samples from each drainage area, and discharge point. As such, the 2017 ERA Level 2 Action Plan failed to adequately evaluate any other drainage areas, undermining the accuracy of the ERA action plan, as well as the effectiveness of the NAL iterative process.

In December 2018, the Chula Vista Facility Owner and/or Operator published the Level 2 ERA Technical Report, which identifies several BMPs implemented at the Facility. However, as the 2018 Level 2 Technical Report admits, the Facility's monitoring data from the current reporting period indicates "that future NAL exceedances have not been eliminated." In fact, the average annual TSS concentration for the Facility is higher than it has been at any point during the past three years. Therefore, the Facility's ERA reports and action plans have failed to adequately evaluate sources of TSS, or recommend BMPs that would successfully reduce TSS below the NAL standard. *See* 2015 Permit § XII.C.1.c.

The Chula Vista Hauling Facility Owner and/or Operator has failed and continues to fail to conduct adequate Level 1 status evaluation and report that complies with the Storm Water Permit. Additionally, the Facility Owner and/or Operator has failed and continues to fail to comply with ERA Level 2 requirements. As such, the Facility Owner and/or Operator is in daily

violation of the Storm Water Permit. Every day the Facility Owner and/or Operator conducts operations at the Facility without an adequate Level 1 status evaluation, and/or without submitting adequate Level 1 and/or Level 2 ERA Reports, Plans, and Studies is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit's Level 1 status ERA evaluation requirement every day since October 1, 2016. The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit for failing to submit adequate ERA Reports every day since January 1, 2017. These violations are ongoing, and Coastkeeper and CERF will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act and Storm Water Permit's Level 1 status ERA evaluation requirements every day since October 1, 2016. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act and Storm Water Permit's Level 1 ERA Report requirements every day since January 1, 2017.

#### **4. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT**

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009 and \$54,833.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, Coastkeeper and CERF will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Coastkeeper and CERF will seek to recover their litigation costs, including attorneys' and experts' fees.

#### **5. CONCLUSION**

Coastkeeper and CERF are willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Coastkeeper and CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the Chula Vista Hauling Facility Owner and/or Operator's violations of the Storm Water Permit.

If you wish to pursue settlement discussions, please contact Coastkeeper and CERF's legal counsel:

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Patrick McDonough  
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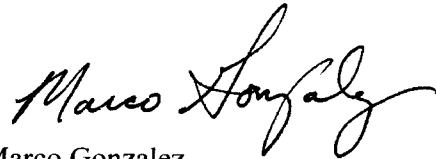
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Sincerely,



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Attorneys for San Diego Coastkeeper



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#### SERVICE LIST

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## **EXHIBIT 1**

### Exhibit 1, Storm Water Sampling Results from the Republic Chula Vista Hauling Facility

No.	Date of Collection	Sample Location	Parameter	Units	Result	Benchmark/ WQO	Annual NAL
1	12/2/14	PL-1	Electrical Conductivity @ 25 Deg. C	umhos/cm	379	200 <sup>3</sup>	N/A
2	12/2/14	RD-1	Oil and Grease	mg/L	20	N/A	15
3	12/2/14	PL-1	Total Suspended Solids (TSS)	mg/L	680	100 <sup>3</sup>	100
4	12/2/14	RD-1	Zinc, Total	mg/L	0.504	0.12 <sup>2, 3</sup>	0.26
5	12/2/14	PL-1	Zinc, Total	mg/L	0.815	0.12 <sup>2, 3</sup>	0.26
6	12/2/14	RD-1	Total Suspended Solids (TSS)	mg/L	384	100 <sup>3</sup>	100
7	12/2/14	PL-1	pH	SU	6	6.5-8.5 <sup>1</sup>	6.0-9.0
8	12/12/14	PL-1	Electrical Conductivity @ 25 Deg. C	umhos/cm	265	200 <sup>3</sup>	N/A
9	12/12/14	RD-1	Electrical Conductivity @ 25 Deg. C	umhos/cm	240	200 <sup>3</sup>	N/A
10	12/12/14	RD-1	Total Suspended Solids (TSS)	mg/L	560	100 <sup>3</sup>	100
11	12/12/14	PL-1	Zinc, Total	mg/L	0.301	0.12 <sup>2, 3</sup>	0.26
12	12/12/14	RD-1	Zinc, Total	mg/L	0.427	0.12 <sup>2, 3</sup>	0.26
13	12/12/14	PL-1	Total Suspended Solids (TSS)	mg/L	502	100 <sup>3</sup>	100
14	12/12/14	RD-1	pH	SU	6	6.5-8.5 <sup>1</sup>	6.0-9.0
15	12/22/15	PL-1	Total Suspended Solids (TSS)	mg/L	604	100 <sup>3</sup>	100
16	12/22/15	RD-1	Total Suspended Solids (TSS)	mg/L	200	100 <sup>3</sup>	100
17	1/5/16	RD-1	Total Suspended Solids (TSS)	mg/L	556	100 <sup>3</sup>	100
18	1/5/16	PL-1	Total Suspended Solids (TSS)	mg/L	463	100 <sup>3</sup>	100
19	1/5/16	PL-1	Oil and Grease	mg/L	18	N/A	15
20	1/5/16	RD-1	pH	SU	6.47	6.5-8.5 <sup>1</sup>	6.0-9.0
21	12/16/16	PL-1	Total Suspended Solids (TSS)	mg/L	282	100 <sup>3</sup>	100
22	12/16/16	PL-1	pH	SU	6	6.5-8.5 <sup>1</sup>	6.0-9.0
23	12/16/16	RD-1	pH	SU	6	6.5-8.5 <sup>1</sup>	6.0-9.0

1 - Basin Plan Objective for Otay River

2 - CTR based on 100 mg/L hardness

3 - MSGP EPA Benchmark Table 8.J-1, 8.E-1, or 8.C-1

# Exhibit 1, Storm Water Sampling Results from the Republic Chula Vista Hauling Facility

No.	Date of Collection	Sample Location	Parameter	Units	Result	Benchmark/ WQO	Annual NAL
24	12/22/16	PL-1	Total Suspended Solids (TSS)	mg/L	174	100 <sup>3</sup>	100
25	1/19/17	PL-1	Total Suspended Solids (TSS)	mg/L	132	100 <sup>3</sup>	100
26	2/27/17	PL-1	Total Suspended Solids (TSS)	mg/L	312	100 <sup>3</sup>	100
27	2/27/17	RD-1	Total Suspended Solids (TSS)	mg/L	166	100 <sup>3</sup>	100
28	11/29/18	RD-1	Total Suspended Solids (TSS)	mg/L	320	100 <sup>3</sup>	100
29	11/29/18	PL-1	Total Suspended Solids (TSS)	mg/L	190	100 <sup>3</sup>	100
30	12/5/18	PL-1	Total Suspended Solids (TSS)	mg/L	230	100 <sup>3</sup>	100
31	12/5/18	RD-1	Total Suspended Solids (TSS)	mg/L	190	100 <sup>3</sup>	100
32	1/14/19	RD-1	Total Suspended Solids (TSS)	mg/L	390	100 <sup>3</sup>	100

1 - Basin Plan Objective for Otay River

2 - CTR based on 100 mg/L hardness

3 - MSGP EPA Benchmark Table 8.J-1, 8.E-1, or 8.C-1

## **EXHIBIT 2**

## Exhibit 2: Precipitation Data for Republic Chula Vista Hauling Facility

National Oceanic & Atmospheric Administration  
National Environmental Satellite, Data, and Information Service  
Record of Climatological Observations  
Station: San Diego Brown Field, CA US USW00003178  
Location Elev: 515 ft. Lat: 32.5722° N Lon: -116.9794° W

Date	Daily Precipitation (inches)
8/2/2014	0.02
9/19/2014	0.02
11/1/2014	0.26
11/21/2014	0.03
12/2/2014	0.44
12/3/2014	0.29
12/4/2014	0.36
12/12/2014	0.89
12/13/2014	0.05
12/16/2014	0.17
12/17/2014	0.45
12/30/2014	0.12
12/31/2014	0.28
1/11/2015	0.31
1/12/2015	0.01
1/26/2015	0.01
1/29/2015	0.03
2/22/2015	0.2
2/23/2015	0.13
2/28/2015	0.03
3/1/2015	0.9
3/2/2015	0.57
4/7/2015	0.03
4/23/2015	0.11
4/24/2015	0.06
4/25/2015	0.05
5/7/2015	0.01
5/8/2015	0.38
5/9/2015	0.05
5/14/2015	0.06
5/15/2015	0.61
5/16/2015	0.02

Date	Daily Precipitation (inches)
5/22/2015	0.06
5/23/2015	0.06
6/10/2015	0.01
7/1/2015	0.02
7/18/2015	0.07
7/19/2015	0.86
9/15/2015	0.81
9/16/2015	0.05
10/4/2015	0.13
10/5/2015	0.62
10/16/2015	0.08
10/17/2015	0.03
10/18/2015	0.02
11/3/2015	0.36
11/4/2015	0.2
11/9/2015	0.02
11/10/2015	0.09
11/15/2015	0.29
11/25/2015	0.13
11/26/2015	0.02
11/27/2015	0.24
12/11/2015	0.42
12/13/2015	0.2
12/19/2015	0.15
12/20/2015	0.01
12/22/2015	0.29
12/23/2015	0.02
12/25/2015	0.36
12/28/2015	0.09
1/3/2016	0.01
1/4/2016	0.26
1/5/2016	0.77



## Exhibit 2: Precipitation Data for Republic Chula Vista Hauling Facility

Date	Daily Precipitation (inches)
1/6/2016	0.24
1/7/2016	0.76
1/8/2016	0.01
1/10/2016	0.01
1/23/2016	0.04
1/31/2016	0.38
2/18/2016	0.01
3/5/2016	0.01
3/6/2016	0.23
3/7/2016	0.55
3/11/2016	0.19
3/30/2016	0.05
4/7/2016	0.27
4/8/2016	0.14
4/9/2016	0.06
4/10/2016	0.55
4/23/2016	0.01
4/27/2016	0.01
5/6/2016	0.73
5/7/2016	0.04
5/30/2016	0.03
9/20/2016	0.73
9/21/2016	0.01
10/31/2016	0.01
11/20/2016	0.06
11/21/2016	0.45
11/26/2016	0.15
11/27/2016	0.24
11/28/2016	0.05
12/1/2016	0.01
12/16/2016	0.98
12/20/2016	0.01
12/21/2016	0.52
12/22/2016	0.8
12/23/2016	0.01
12/24/2016	0.85
12/30/2016	0.25

Date	Daily Precipitation (inches)
12/31/2016	0.74
1/1/2017	0.03
1/5/2017	0.19
1/9/2017	0.06
1/11/2017	0.05
1/12/2017	0.34
1/13/2017	0.74
1/14/2017	0.04
1/18/2017	0.04
1/19/2017	0.49
1/20/2017	0.79
1/22/2017	0.22
1/23/2017	0.73
1/24/2017	0.25
2/7/2017	0.19
2/11/2017	0.03
2/17/2017	1.28
2/18/2017	0.28
2/19/2017	0.06
2/26/2017	0.07
2/27/2017	2.21
2/28/2017	0.06
3/5/2017	0.01
3/21/2017	0.01
3/22/2017	0.03
3/23/2017	0.04
5/6/2017	0.06
5/7/2017	1.25
5/8/2017	0.01
7/24/2017	0.01
9/3/2017	0.02
9/8/2017	0.08
9/21/2017	0.03
11/7/2017	0.31
12/20/2017	0.09
1/8/2018	0.07
1/9/2018	1.29

## Exhibit 2: Precipitation Data for Republic Chula Vista Hauling Facility

Date	Daily Precipitation (inches)
1/10/2018	0.22
2/12/2018	0.02
2/14/2018	0.06
2/18/2018	0.03
2/19/2018	0.04
2/23/2018	0.02
2/27/2018	0.76
3/3/2018	0.02
3/10/2018	0.39
3/13/2018	0.02
3/14/2018	0.04
3/15/2018	0.13
3/17/2018	0.37
3/18/2018	0.02
3/22/2018	0.03
3/23/2018	0.01
4/19/2018	0.06
4/30/2018	0.01
5/2/2018	0.06
5/12/2018	0.04
5/20/2018	0.01
5/21/2018	0.02
10/5/2018	0.02
10/12/2018	0.09
11/22/2018	0.13
11/29/2018	0.91
11/30/2018	0.14
12/1/2018	0.02
12/5/2018	0.61
12/6/2018	1.07
12/25/2018	0.27
12/31/2018	0.01
1/5/2019	0.11
1/6/2019	0.27
1/12/2019	0.36
1/14/2019	0.52
1/15/2019	0.13

Date	Daily Precipitation (inches)
1/17/2019	0.24
1/18/2019	0.01
1/21/2019	0.01
1/31/2019	0.41
2/1/2019	0.01
2/2/2019	1.19
2/4/2019	0.25
2/5/2019	0.26
2/6/2019	0.01
2/10/2019	0.04
2/13/2019	0.51
2/14/2019	1.03
2/15/2019	0.09
2/16/2019	0.02
2/17/2019	0.18
2/18/2019	0.21
2/20/2019	0.41
2/21/2019	0.37
3/2/2019	0.14
3/3/2019	0.01
3/5/2019	0.01
3/6/2019	0.1
3/7/2019	0.03
3/8/2019	0.12
3/11/2019	0.4
3/12/2019	0.04
3/20/2019	0.02
3/21/2019	0.05
4/3/2019	0.08
4/6/2019	0.02
4/16/2019	0.03
4/28/2019	0.01
4/29/2019	0.04
4/30/2019	0.11
5/5/2019	0.02
5/6/2019	0.01
5/10/2019	0.02

## Exhibit 2: Precipitation Data for Republic Chula Vista Hauling Facility

<b>Date</b>	<b>Daily Precipitation (inches)</b>
5/11/2019	0.03
5/16/2019	0.04
5/19/2019	0.38
5/20/2019	0.12
5/21/2019	0.12
5/22/2019	0.12
5/26/2019	0.19
6/21/2019	0.03
6/24/2019	0.01